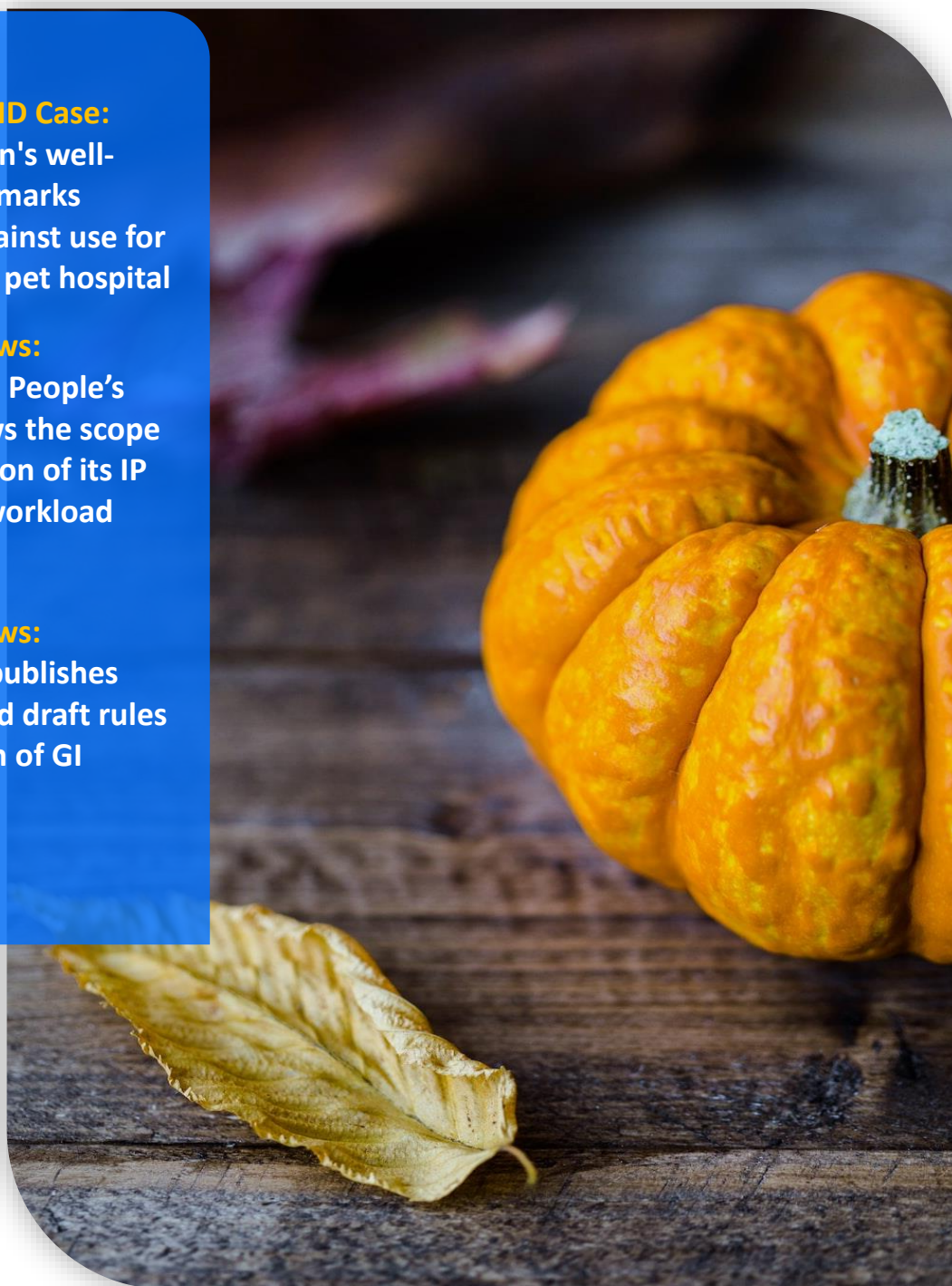


- **n° 48 WHD Case:**
TM | Michelin's well-known trademarks protected against use for pet food and pet hospital
- **n° 24 News:**
IP | Supreme People's Court narrows the scope and jurisdiction of its IP Court amid workload concerns
- **n° 25 News:**
GIs | CNIPA publishes sorely needed draft rules on protection of GI products



n° 48 WHD Case: TM | Michelin's well-known trademarks protected against use for pet food and pet hospital

Du Binbin and Paul Ranjard, 1 November 2023, first published by [WTR](#)

Michelin tyres and the *Michelin Guides* are the two core product lines of the Michelin Group. The increasing popularity of Michelin in China recently led the company to take enforcement measures not only against tyre manufacturers or restaurants and catering businesses, but also against pet-related products and services.

Pet food case

In 2020 Michelin discovered that several types of cat and dog food product were sold with packaging bearing signs such as MICHELIN, MICHELIN SERIES, MICHELIN PAROTID GLAND, 米其林 (the Chinese equivalent of MICHELIN), 米其林法餐系列 ('MICHELIN French cuisine series') and 米其林法餐 T 系列 ('MICHELIN French cuisine T series').



After investigation, it was found that three companies were involved: Shanghai Tang Shi Mei Jia International Trading Co Ltd, Shandong Han Ou Biotechnology Co Ltd and Hangzhou Chong Mei Trading Co Ltd.

In December 2021 Michelin sued the three companies before the Hangzhou Intermediate People's Court, requesting cross-class protection for its well-known trademarks 米其林 (MICHELIN in Chinese) and MICHELIN, registered in Classes 12 (tyres) and 16 (*Michelin Guides*).

In December 2022 the court issued a judgment ((2021) Zhe 01 Min Chu No 3020) determining that the trademarks MICHELIN and 米其林 registered in Class 16 are well known and that the defendants had infringed such trademarks. The court ordered the defendants to pay an aggregate amount of Rmb500,000 to compensate Michelin for its economic losses, splitting the liabilities among the defendants according to their respective activities in terms of production and sales.

In the judgment, the court determined that, although the infringers were using their own trademarks on the infringing products, the presence on pet food of Michelin's trademarks, which are famous in relation to the rating of high-end restaurants, was likely to harm the reputation of Michelin's trademarks. The court thus ordered the defendants to make a public announcement in that respect.

The above judgment is final.

Pet hospital case

In 2021 Michelin discovered that a company called Jiu Chong Pet Hospital was using the words '米其林宠医' ('Michelin Pet Hospital') on its signboard and interior decoration, as well as in its online store.




In December 2021 Michelin sued Jiu Chong Pet Hospital before the Hangzhou Intermediate People's Court on the basis of its trademarks MICHELIN and 米其, registered in Class 12 (tyres), claiming cross-class protection for its well-known trademarks.

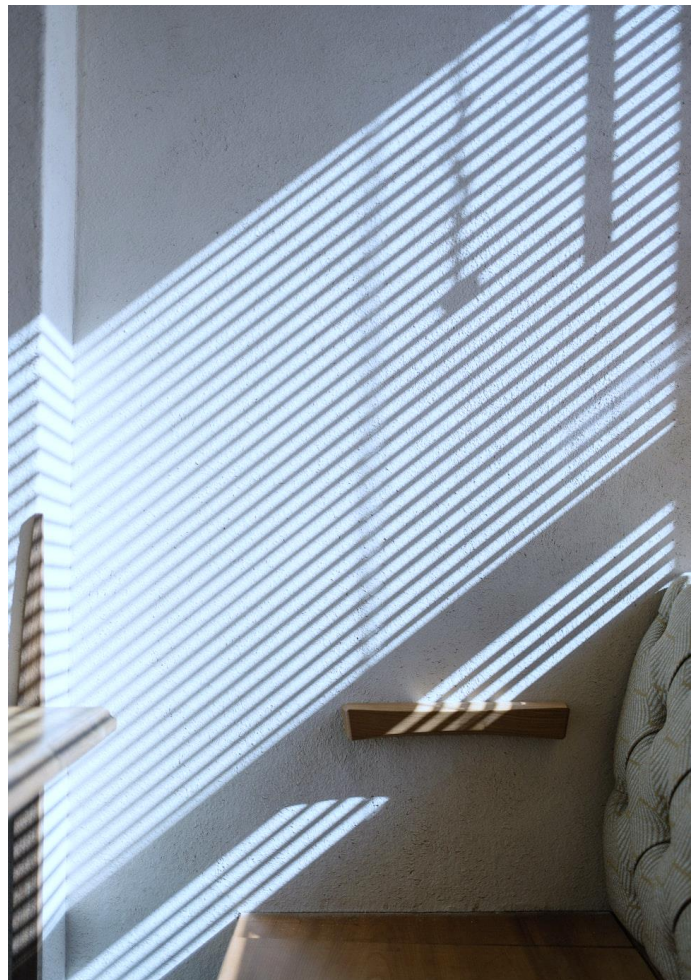
In December 2022 the court issued a judgment ((2021) Zhe 01 Min Chu No 2931) determining that 米其林 and MICHELIN in Class 12 are well-known trademarks, and that the use of such marks for a pet hospital constituted an act of infringement. Damages were awarded in an amount of Rmb100,000.

The above judgment is final.

Comment

The above two judgments are new milestones in the protection record of Michelin's well-known trademarks, with the court confirming that their scope of protection may cover very different types of activities, such as pet-related goods and services.

In the pet food case, the court also found that using a trademark known for high-end human dining on pet food damaged the reputation of the trademarks and ordered the defendants to publish a statement to eliminate the negative impact of their actions. In practice, there are not many cases in which courts assent to such request. For example, in the Jindian sanitary product case ((2019) Yu 01 Zhi Min Chu No 1097), the court found that the JINDIAN trademark, registered for milk, constituted a well-known trademark; therefore, the defendant's use of JINDIAN on sanitary products weakened the distinctiveness of the plaintiff's JINDIAN mark and improperly utilised the market reputation of that mark. However, the court did not support the plaintiff's request that the defendant should publish an apology statement to eliminate the impact of its actions. Therefore, the Hangzhou Intermediate People's Court's findings and judgment in the pet food case will have a strong referential significance for similar cases. 



n° 24 News: IP | Supreme People's Court narrows the scope and jurisdiction of its IP Court amid workload concerns

Huimin Qin, Paul Ranjard and Nan Jiang, 15 November 2023, first published by [IAM](#)

On 16 October 2023 the Supreme People's Court (SPC) issued a decision to amend the Provisions on Several Issues Concerning the SPC IP Court of 27 December 2018, which came into effect on 1 November 2023.

The National People's Congress decided on 26 October 2018, that all appeals of lower-court judgments in technical cases should be submitted to the SPC. As a result, the SPC created a special court – the IP Court – and on 27 December 2018 promulgated the aforementioned 2018 provisions, setting out how this court would function and defining the boundaries of its jurisdiction.

According to the 2018 provisions, the SPC IP Court has jurisdiction over all appeals against judgments and rulings rendered by intermediate courts, IP courts and high courts, in civil cases (including contractual disputes) involving:

- invention patents;
- utility models (but not designs);
- new plant varieties;
- technical secrets;
- computer software;
- integrated circuit layout designs; and
- antitrust matters.

The court also has jurisdiction over all appeals against Beijing IP Court judgments and rulings in administrative cases that involve the grant and confirmation of invention patents, utility models, designs, new plant varieties and integrated circuit layout designs.

Finally, it has jurisdiction over all appeals against intermediate court, IP court and high court judgments and rulings in administrative penalty cases involving all the IP types set out in the above list, as well as designs.

The SPC IP Court was so successful that it was swiftly inundated with appeals. The need for the SPC to amend the 2018 provisions and narrow the scope of its IP court's jurisdiction became increasingly pressing.

Scope of jurisdiction

Appeals related to the following cases remain unchanged:

- administrative litigation concerning the granting and confirmation of patent rights (ie, invention patents, utility models and designs), new plant varieties and integrated circuit layout designs;

- civil and administrative litigation surrounding ownership disputes, invention patent infringement, new plant varieties and integrated circuit layout designs; and
- civil and administrative litigation concerning monopolies.

Changes will affect the following types of cases:

- civil and administrative litigation concerning the ownership and infringement of utility models, trade secrets and computer software – only the appeals against high court first-instance judgments will be accepted, so intermediate-level first-instance judgments should be appealed before the provincial high courts;
- contractual disputes, which will be excluded; and
- design cases, which will be excluded except those that concern the granting and confirmation of the rights.

The first two points with regard to the changes being made are in accordance with the SPC's April 2022 judicial interpretation, which lowered the first-instance jurisdiction level for IP contractual cases and design cases.


In the meantime, the SPC will expand the jurisdiction of its IP Court over cases involving applications for reconsideration of interim measures ordered in the first instance of civil and administrative cases. Such cases include matters such as pre-trial injunctions, especially the highly controversial anti-suit injunctions, which used to be heard by the court that issued the order in the first place.

Addressing the abuse of litigation rights

The amendment also includes a new Article 4 about the abuse of litigation rights.

Article 4 states:

The Intellectual Property Court may request the parties to disclose information of any correlated cases involving the ownership, infringement, and the granting and confirmation of the disputed intellectual property rights. Failure to provide accurate disclosure may be taken into consideration when ascertaining whether the party follows the principle of good faith or whether the party abuses its rights.

This article refers to the well-established court principle that IP rights obtained in bad faith should not be enforced or protected. Therefore, a case initiated by such a bad-faith rights holder should be dismissed. 

n° 25 News: GI | CNIPA publishes sorely needed draft rules on protection of GI products

Zhigang Zhu and Paul Ranjard, 25 October 2023, first published by [IAM](#)

On 18 September 2023 the China National Intellectual Property Administration (CNIPA) published the Regulations on the Protection of Geographical Indications Products, with a call for comments until 2 November 2023.

The current system for GI product protection in China comprises the Provisions on the Protection of Geographical Indications Products (15 July 2005) and the Measures on the Protection of Foreign Geographical Indications Products (28 March 2016, amended 28 November 2019).

The provisions apply to all GI products, while the measures provide special rules for the recognition and registration of foreign GI products. These two regulations focus mainly on the registration and administration procedures for GIs and refer to other laws such as the Product Quality Law or the Consumer Protection Law when it comes to protection.

On 24 September 2020, the CNIPA published a first draft revising both the provisions and the measures, which stipulated detailed procedures for the registration, opposition and cancellation of GIs, and contained other provisions conferring some limited enforcement powers to the CNIPA (eg, a warning and fine of 30,000 yuan).

While specific legislation on GIs is becoming increasingly necessary, drafting comprehensive laws takes time. Therefore, in order to cope with this growing urgency, the new draft regulations update the current regulation and provide more detailed rules for the registration, use and protection of GI products. The CNIPA also announced that specific rules concerning examination, use of special signs, supervision and administration of foreign GI products will be issued separately (Article 37).

Opposition and cancellation procedures

Article 17 describes the opposition procedure against the registration of new GI products, emphasising transparency and fairness. After receiving an opposition request, the CNIPA will promptly inform the applicant and forward the relevant materials. The draft also encourages dispute resolution through negotiation; in cases where no consensus is found, the CNIPA will convene an expert committee to adjudicate.

According to Article 19, applicants may request that the CNIPA review decisions to reject an application (this request must be filed within 30 days of the decision notification). The CNIPA's decision is to be made within two months and is subject to appeal before the Beijing IP Court within six months.

Further, Article 30 introduces a cancellation procedure. Any organisation or individual may petition the CNIPA to revoke a registered GI product under certain conditions, such as it becomes generic or deceptive. Cancellation decisions can be appealed to the Beijing IP Court within six months.

Protection measures

With regard to the protection of GI products, the new draft outlines significant – and welcome – measures. While the 2020 draft gave very limited enforcement powers to the CNIPA (a fine of 30,000 yuan), Article 33 gives the authorities the power to immediately stop illegal activities and seize illegal proceeds. Serious violations may incur fines of up to five times the illegal gains, with a maximum fine of 100,000 yuan. For cases involving no proceeds or proceeds under 50,000 yuan, fines of 50,000 yuan may apply. If the infringing product's seller has no knowledge of the infringement but provides information about the supplier, the seller is exempt from fines but the products should still be seized and destroyed.

Article 33(1)(4) prohibits the unauthorised use of a GI product name, even if the true origin of the product is mentioned. GI product names are not allowed to be registered as enterprise names (Article 38).

A promising future for GIs in China

These new rules will benefit all foreign GIs recognised in China, whether they are registered on their own initiative or whether they are protected under an international agreement to which China is a signatory (such as the EU China Agreement for the protection of GIs, from 14 September 2020). 